

1                               BEFORE THE POLLUTION CONTROL HEARINGS BOARD  
2                               STATE OF WASHINGTON

3           KNAPP FARMS,

4                               Appellants,

5                               v.

6           SPOKANE COUNTY AIR POLLUTION  
7           CONTROL AUTHORITY,

                              Respondent.

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)  
)       PCHB No. 89-52  
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)       FINAL FINDINGS OF FACT,  
)       CONCLUSIONS OF LAW  
)       AND ORDER  
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9           This matter, the appeal of a civil penalty of \$50 for alleged  
10          violation of open burning regulations, came on for hearing on July 26,  
11          1989, in Spokane, Washington, before Wick Dufford, presiding for the  
12          Board. Member Harold S. Zimmerman has reviewed the record. Andrew  
13          Knapp owner, represented Knapp Farms pro se. The Spokane County Air  
14          Pollution Control Authority (SCAPCA) was represented by Steven C.  
15          Miller, Attorney at Law. The proceedings were recorded by Virginia M.  
16          Recanzone, court reporter.

17               Witnesses testified. Exhibits were examined. From the evidence  
18

1 received the Board enters the following:

2 FINDINGS OF FACT

3 I

4 On March 18, 1989, an outdoor fire was burned on farm property  
5 operated by Andrew Knapp, on the Peone Road about two miles east of  
6 the Mead fire station in Spokane County.

7 The fire was in a pile approximately 30-40 feet in circumference  
8 and about five feet high. The pile consisted of stumps, slash and  
9 prepared wood, such as pallets, fence posts and boards from an old  
10 corral.

11 II

12 In response to a citizen complaint, the fire department visited  
13 the scene and made a report which was thereafter forwarded to SCAPCA.  
14 Mr. Knapp, who was present, was unable to locate a burning permit at  
15 the time of the fire department's visit. However, the fire department  
16 found no safety violations and did not instruct Mr. Knapp to  
17 extinguish the fire.

18 III

19 March 18, 1989, a Saturday, was the first day of the burning  
20 season for gardening waste declared by SCAPCA in the spring.

21 IV

22 On October 18, 1988, Mr. Knapp had obtained a permit for burning  
23 logging slash from the Washington Department of Natural Resources  
24

25  
26 FINAL FINDINGS OF FACT,  
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1 (DNR). This slash burn permit expired on March 31, 1989.

2 V

3 On April 3, 1989, SCAPCA issued to Knapp its Notice of Violation  
4 #4266 asserting a violation of Article VI, Section 6.01 of SCAPCA's  
5 Regulation I in connection with the burning on March 18, 1989. The  
6 Notice assessed a civil penalty of \$50.

7 On April 25, 1989, the Pollution Control Hearings Board received  
8 Knapp's appeal and the appeal became our PCHB No. 89-52. The Board  
9 takes official notice of the provisions of SCAPCA's Regulation I.

10 VI

11 The burning in question was not the burning of gardening waste,  
12 which is allowed without prpermit during burning season. The burning  
13 in question was not limited to logging slash, authorized to be burned  
14 by DNR's permit.

15 The large pile of debris which was burned included wood waste  
16 from prepared lumber. There was no showing that these prepared  
17 materials were painted or otherwise treated. There was no showing  
18 that material other than wood was in the fire.

19 VII

20 At the time of fire Mr. Knapp was under the impression that his  
21 DNR permit covered the burning he was doing. He was unaware of  
22 SCAPCA's permit requirements. Prior to the burning he had notified  
23 the fire department of his intention to burn, and was completely  
24 cooperative with the fire department personnel who came to the scene.

25  
26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW AND ORDER  
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VIII

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such.

From these Findings of Fact the Board reaches the following

CONCLUSIONS OF LAW

I

The Pollution Control Hearings Board has jurisdiction over the parties and the subject matter. Chapters 43.21B and 70.94 RCW. Because the burning exceeded the authorization of DNR's permit, SCAPCA's regulations can be applied. See Simpson Timber v. OAPCA, 87 Wn.2d 35, 549 P.2d 5 (1976).

II

The Washington Clean Air Act authorizes local air pollution control authorities to adopt regulations. RCW 70.94.141, and allows the assessment of civil penalties, when such regulations are violated. RCW 70.94.431. The assessment of penalties is done on a strict liability basis. The knowledge or intention of a violator is not relevant to whether a violation occurred.

III

Article VI, Section 6.01 on SCAPCA's Regulation I requires that a permit be obtained before prepared wood waste is burned. When such a permit is sought, SCAPCA inspects the site and determines in advance whether prohibited materials, such as rubber or articles treated with petroleum products, are included in the burn pile.

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

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1 Although there is no evidence of prohibited material in this  
2 fire, the SCAPCA permit requirement was violated by the burning of  
3 prepared wood without prior written approval.

4 IV

5 Though not relevant to the question of violation, knowledge and  
6 intention are considered in determining whether the amount of penalty  
7 is appropriate. The primary object of civil penalties is to change  
8 the behavior of violators. Here there is no pattern of prior  
9 violations. There is evidence of an effort to comply with the law.  
10 The information necessary to avoid such a problem in the future is now  
11 known to Mr. Knapp and it appears unlikely that further violations  
12 will occur. Under all the facts and circumstances, we conclude that  
13 the objects of the law will be appropriately served by the Order set  
14 forth below.

15 V

16 Any Finding of Fact which is deemed a Conclusion of Law is hereby  
17 adopted as such.

18 From these Conclusions of Law the Board enters the following  
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ORDER

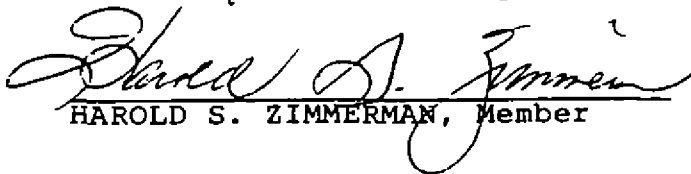
The violation asserted in SCAPCA Notice of Violation #4266 is affirmed. The civil penalty is affirmed, but \$40 of said penalty is suspended on condition that appellant not violate SCAPCA's regulations for one year from the date of this Order. Ten Dollars (\$10) is due and owing.

DONE this 12th day of October, 1989.

POLLUTION CONTROL HEARINGS BOARD



WICK DUFFORD, Presiding



HAROLD S. ZIMMERMAN, Member

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

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